

Meeting of 1999-7-13 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JULY 13, 1999 - 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Cecil E. Powell, Also Present:
Presiding Bill Baker, City Manager
John Vincent, City Attorney
Brenda Smith, City Clerk
Lt. Col. Jeff Ewing, Fort Sill Liaison

The meeting was called to order at 6:00 p.m. with Invocation by Pastor Chuck Pettijohn, Liberty Heights Christian Church, followed by the Pledge of Allegiance. Notice of meeting and agenda were posted on the City Hall notice board as required by State Law.

ROLL CALL

PRESENT: Richard Williams, Ward Two
Glenn Devine, Ward Three
John Purcell, Ward Four
Robert Shanklin, Ward Five
Charles Beller, Ward Six
Stanley Haywood, Ward Seven
Randy Warren, Ward Eight

ABSENT: G. Wayne Smith, Ward One

Gary Salva, Parks & Recreation Director, introduced Mr. Kim Shahan who was recently employed at the City's Assistant Director of Parks & Recreation. Salva outlined Mr. Shahan's abilities and he was welcomed to City employment.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF JUNE 22 AND SPECIAL MEETING OF JUNE 29, 1999.

MOVED by Williams, SECOND by Haywood, for approval of the Minutes. AYE: Williams, Devine, Purcell, Shanklin, Beller, Haywood, Warren. NAY: None. MOTION CARRIED.

PRESENTATION OF QUARTERLY REPORT BY LAWTON HUMAN RIGHTS & RELATIONS COMMISSION

Bobbi Whitson, Chairperson of Lawton Human Rights & Relations Commission, offered to answer questions regarding the report which was contained in the agenda folder. Mayor Powell said an informational program on disabilities is being planned for October.

AUDIENCE PARTICIPATION:

Steven Karhurst, 1807 Dearborn, said he had been trying to get the house at 1805 Dearborn demolished and had given pictures to the Code Administration Director. He said the structure is rat infested, had been involved in a fire, and had been in bad shape for a year. Mayor Powell asked if Council took action a year ago. Karhurst said the house has been burned down for about a year now and the fire was last August; it is not boarded up and people climb in and out of the windows; trash is falling off of the roof at his mother's back yard, and there is a pool in the back yard with water in it. Mayor Powell said he would look at the property in the morning and that the City Manager would have staff members make inspections as soon as possible.

Beller said he had asked a person to speak under audience participation but the item was then prepared as an addendum. It was agreed that the addendum items would be considered after Unfinished Business.

Josephine Burnett, 931 SW 34th Street, requested that something be done about semi-trailer trucks in neighborhoods. She said they park on the streets leaving a very narrow passage for traffic, and they also park in parking lots. Burnett expressed concern over the trucks having large gas tanks and felt that was unsafe in

residential areas. She said noise is also a problem and that she lived the second house from an intersection. Burnett asked if it would be possible to have a sign erected to stop the trucks from using J Avenue between 38th and 27th Streets.

Warren said he had requested an ordinance in this regard from the City Attorney's Office some time ago and would ask that it be brought forward if Council so desired. This was agreeable.

Shanklin said some ordinances are in place at this time regarding truck traffic. Vincent agreed and briefly explained. Burnett said the trucks carry a lot of weight which may not be good for the City streets and that the City should receive some of the tax funds paid by the trucking firms to repair the streets. Mayor Powell said he appreciated the input and that the problem would be looked into.

UNFINISHED BUSINESS:

1. Consider the following damage claim recommended for denial: Kathy Fanning. Exhibits: Claims Memorandum/Recommendation.

Vincent said the claim had been tabled at two or three meetings due to circumstances beyond anyone's control, and that Ms. Fanning is present today to address the Council. He said the report prepared by Frank Jensen is in the agenda folder and the recommendation is that the claim be denied.

Kathy Fanning spoke regarding her claim and her comments are included verbatim as follows:

"I'd like to thank the Mayor and Council and City Manager for allowing me the opportunity to come and state my side on this. As you know you have before you the claims memorandum from the City Attorney's Office and with your permission I'd just like to simply make a statement first and then you can ask questions or whatever. On this damage claim it's for denial I have to say that I am, the way it was written, I am angry and I am insulted and this is the biggest piece of creative writing I have ever seen. What we have here, almost every paragraph has either an untruth or the information has been so creatively reconstructed that it paints a whole different picture. It is portraying me as a gold digging, demanding, and they love this word demanding as you see it written several times in this, a person that wants something more than anybody else and I assure you, you all know me, that is not how I am.

This has been a one-sided investigation. None of you have received the original damage claim. I know you don't normally, that is the procedure and that's why we have our City Attorney's Office for, but if you don't see it, all you have is the City Attorney's side, and it doesn't tell you anything as proven in this particular document. This is a one-sided investigation. I gave at least five to six witnesses. In talking to some of those witnesses, including Councilman Haywood, and talking to the City Attorney's Office, not one of my witnesses were talked to. They talked to exactly two people and that was both in Housing and Community Development Department and the two people that caused me all the trouble. It was discriminatory to me and has caused me all that stress and that is not right. I could go almost individually down this whole thing and let you know. What the shame is that no wonder citizens have a very, are afraid to come forward to state their opinions when they believe their rights have been violated because this is the kind of thanks you get, you get slandered. This is a public, this is a public information, anyone can read it and it's borderline slander and defamation of character to me and I'll leave it up to Council if you have any questions for me or I can go item by item, whatever the case may be." (end verbatim portion)

Mayor Powell asked if there were questions. Beller said he had no questions for Ms. Fanning but that there were a couple of things he did not understand in the report. Beller said Fanning was told that the roof and the heating and air conditioning unit had to be replaced if they were more than two years old, and asked if that statement was made. Vincent said the way it was related to his staff, that statement was not made. Beller said he also noticed the word "demand" in the memorandum and asked if that was just a choice of words. Vincent said as far as he knew, it was just a choice of words.

Beller said he did not doubt that there may be more to this than met the eye and the process was out of sequence as far as acquiring a house before the eligibility certificate was issued. Fanning said they were told on the day of the drawing that they could start looking then and not to sign a contract, and then when you got the certificate of eligibility, you could sign a contract. Fanning said that was what she was referring to as far as an inaccuracy on the second page, first paragraph, which said "these procedures were previously provided to the participants in writing via an information packet distributed" and that it was not. Fanning said they received information on how to go and look for a house, what the program offered, what the qualifications were, and it did not state anything about the fact that if you were picked number one, you got to go with a house first, then number two, number three, and then if any funds were left by the time they got down to you, they would take care of you. Fanning said she was 21st on the list. She said they told her to go out and look and that she lost several houses, and one of the secretaries in the City Attorney's Office lost a house just like she did and also lost out on good mortgage interest rates because of all of this.

Beller said it would have been worse if the applicants would have committed without the funding being available.

Fanning agreed and said they were not told that until she and someone else had gone public because no one would inform them of anything, and why they were not getting the certificates, and it went on and on and on, telling them one thing and then another. Fanning said the memo shows that she was 21st out of 40 participants, which paints an inaccurate picture actually because there were 23 participants and the 24th through 40th were on an alternate list if anyone was disqualified or fell through, so there were 23 and it made it look like she was in the middle of the list but she was actually toward the end.

Shanklin said he would not be able to make a decision without much more detailed investigation.

MOVED by Shanklin, SECOND by Haywood, to appoint a committee of three, since she is a City employee involved with the City, let's let the Council committee of three check into it and report back.

Shanklin volunteered to serve on the committee.

Williams asked if the investigation so far was solely a departmental investigation or if Auditing was involved.

Vincent said it was just the City Attorney's department and that Mr. Jensen was the investigator. Williams asked if that is something that Auditing has been involved with in the past and Vincent said no.

VOTE ON MOTION: AYE: Devine, Purcell, Shanklin, Beller, Haywood, Warren, Williams. NAY: None. MOTION CARRIED.

2. Hold a public hearing and adopt resolutions declaring the structures at 1907 NW Andrews and 703-1/2 SW H Avenue to be dilapidated and detrimental to the health and safety of the community, and authorize the expenditure of CDBG funds, if necessary, to demolish the structures. Exhibits: Resolution No. 99-84; Resolution No. 99-85.

Dan Tucker, Code Administration Director, said these two properties were tabled from the June 29 Special Council meeting at the request of the owners. Video of 1907 NW Andrews was presented; structure was damaged by fire and has been vacant for quite some time. Heavy fire damage occurred to the interior portion, as well as the rear and sides of the exterior; little fire damage is apparent on the front exterior.

Williams asked approximately when the fire took place and how long the structure has been in this condition.

Tucker said it has been in this condition for at least a year, and the person who currently owns the property did not own it at the time this action began. Tucker said the present owner indicated to him on the phone that he plans to fix it up.

PUBLIC HEARING OPENED. No one appeared to speak. PUBLIC HEARING CLOSED.

MOVED by Williams, SECOND by Purcell, to accept staff recommendation and adopt Resolution No. 99-84.

Purcell pointed out the need to provide public notice when the City begins actions such as these so that prospective buyers would be aware of the action. He asked if something could be done legally to enter this into some type of record to protect prospective buyers.

Baker said they were looking at writing a Council Policy to cover demolitions from the time the City receives notice of a problem, through the entire process, including time tables, and the time when Council considers a resolution and then the Clerk finally gets to the point of filing a lien. He said some of these problems could be addressed in the policy. Purcell said he was concerned that there be a legal document in place at some location so buyers would be aware of the status before transferring title. Mayor Powell said that was being looked into.

VOTE ON MOTION: AYE: Purcell, Shanklin, Beller, Haywood, Warren, Williams, Devine. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 99-84

A resolution determining a certain structure to be dilapidated and detrimental to the health, benefit, and welfare of the community, and ordering that the building be demolished and removed.

Legal Description: Lawton Heights Addition, Block 69 pt of Lots 26-27 being W 50' of E200' of Lot 4, Comanche County, OK. Title Holder: Jimmie Lynn Plezia; Mortgage Holders: American National Bank and Allied Group Mortgage.

Tucker presented video of 703-1/2 SW H Avenue, stating it is a secondary structure on the property. He said the owner was in this morning and understands that the building needs to be demolished. Tucker said the owner requested Council condemn the structure.

Williams asked if the owner wanted to get a permit to tear it down. Tucker said yes, but it is to the owner's advantage for Council to condemn the structure because of the dumping fees.

PUBLIC HEARING OPENED. No one appeared to speak. PUBLIC HEARING CLOSED.

Warren asked why the two properties were tabled previously. Tucker said both owners were out of town before and asked that they be tabled.

MOVED by Shanklin, SECOND by Haywood, to adopt Resolution No. 99-85. AYE: Shanklin, Beller, Haywood, Warren, Williams, Devine, Purcell. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 99-85

A resolution determining a certain structure to be dilapidated and detrimental to the health, benefit, and welfare of the community, and ordering that the building be demolished and removed.

Legal Description: Woods Addition, Block 15, Lots 29 and 30, Comanche County, OK.

Title Holder: George & Marguerite Forducey; Mortgage Holder: None.

ADDENDUM:

1. Consider waiving Landfill fees for debris caused by the May 31st storm. Exhibits: None.

Beller said he was contacted by some homeowners in Pecan Valley who suffered considerable damage during the storm of May 31. The homeowners requested that the waiver on landfill fees be extended and the City Manager had suggested the matter be brought before Council. Beller asked that Council receive comment from Dr. Littlefield and he was recognized to speak.

Dr. Wayne Littlefield said he was born in Lawton and had operated an office in Lawton since 1974. He said he was representing several families in Pecan Valley and surrounding neighborhoods who had suffered severe damage to their homes on May 31, and the concern is the cost of the dumping fees at the City Landfill. The City was very gracious to suspend the normal dumping fees to aid storm victims for a while, but many were unable to take advantage of that good gesture due to the time it took their insurance companies to decide what could be done with the damaged houses and buildings. The companies had a lot of decisions to make and it took a great deal of time, and the residents could not proceed until then but the grace period had already run out. Littlefield said generally speaking, the families that suffered the most damage were taking the longest. He said he understood that some were taking advantage of the waiver and dumping items that were not involved in the storm, but that the situation could be easily remedied by qualifying those who are eligible and giving them a dumping license. Littlefield said they were not asking for anything that had not already been done for others and felt it was a reasonable request because they had no control over the circumstances that created the dilemma.

Purcell asked how long of a period of time was being requested and Dr. Littlefield said there was not an exact time because some of them would not be able to get started in the near future. Warren asked if the City could issue permits, rather than extending this open ended, after we have viewed the damage and know it was caused by the storm.

Shanklin asked if insurance companies were not paying the costs involved with the Landfill fees. Littlefield said some have insurance and some do not, or some do not have insurance for this portion. Mayor Powell said it was his impression that most policies included a debris removal provision and Shanklin agreed. Shanklin said he has had to go back to the Landfill twice and had to pay for it due to limbs in his area and that he did not ask for any favors. Beller said they are not asking for limbs but strictly for foundations and homes, the debris from the house proper, not the trees and limbs. Shanklin asked how many houses were involved. Littlefield said probably ten or eleven.

Mayor Powell said if an insurance policy has a debris removal provision that pays the homeowner for that purpose, it is not fair to Lawton citizens to allow someone who has already been paid for this expense to be able to dump at Lawton's landfill free of charge. He said he hoped something could be worked out and that they were sympathetic.

Beller suggested giving the City Manager some discretion to deal with this situation. Williams said he did not feel the City Manager should make the decision. Beller said Council would direct the City Manager to work out a process and those with insurance could pay. Shanklin asked how that would be identified and how he would explain to the widow ladies living on the south side of Lee Boulevard that we are giving away our landfill and now want more tax dollars from them to expand it. Beller said it was a time of emergency and Shanklin said that had passed. Beller said the debris remains, as is the case in the Oklahoma City area from their May 3rd storm.

Littlefield said his house was gone and he had to move so he was not real sympathetic about some hypothetical situation about somebody that maybe will have a problem in the future, and that he did not have a house, and that he was not the only one. Littlefield said he had the money to pay for it and was not worried about the money but that other people had got this during a specific time frame and if he would have had his dump trucks in there five weeks ago, he would not need to be here so it was a discriminatory thing as far as time was concerned, and if it was fair then, why is it not fair now.

Purcell suggested someone examine the insurance policies for the ten or twelve homes in question and if they do

not provide for debris removal reimbursement, they could be issued a permit for the removal of that debris; if the insurance policy pays for it, they would not be issued a permit. He asked if that was legally acceptable. Vincent said any of the suggestions mentioned were possible. Baker said he felt it would work, and if Council wanted to provide some consideration, he could work out the details. Baker said this was not just for Pecan Valley and that he had also been contacted by residents of Sooner Estates, which is south of Pecan Valley, so the same concession would need to be made for others and not just restrict it to Pecan Valley, and that Lawton citizens should also be considered.

Baker said the State DEQ waived the \$1.25 per ton fee up to July 15, so the \$1.25 per ton must be collected regardless because that must be remitted to the State for every ton received at the landfill. He said he had also spoken with Pecan Valley residents who were agreeable to extending this for a two week period and the majority could finish by the end of July.

Shanklin agreed that those with insurance should pay, and those who do not have coverage for debris removal should be given a card, rather than just allowing unlimited fee waivers.

MOVED by Purcell, SECOND by Warren, to direct the City Manager to get with the people outside the City limits, and if they have a request to dump, we check their insurance policy or they get a letter from the insurance company, whatever they want, and for those who do not have insurance that pays for dumping, we issue a free dumping permit, for 30 days.

Purcell said those inside the City limits should not be affected because they are not charged to dump anyway. Baker asked if the person should be charged only the amount they are insured for, such as if they are covered for \$2,000 debris removal and the landfill fee is in excess of that amount, should the excess amount be waived and the response was yes and the City Manager could use his discretion in that regard.

Williams asked how far out this went and said he did not want to be a mean person but many of these persons live in six figure size homes, and is it just limited to Pecan Valley and Sooner Estates, or to Cache, or what area. Baker said he felt it could be limited to Comanche County and if the evidence is not there, they would not be given a card or permit. Mayor Powell said it must be storm related. Baker said he thought the predominant damage was in Pecan Valley and Sooner Estates, although there may be other isolated cases. Purcell said he was speaking only of storm related damage and not for someone who decided to go out and tear down a building on their own.

Shanklin asked if they were going to come in and make a request or if we were going to go looking for them. Baker suggested that if someone wanted to take advantage of this that they needed to contact his office and they would then go out and meet with them and check it, but that he did not want to go out looking for them.

VOTE ON MOTION: AYE: Beller, Haywood, Warren, Devine, Purcell. NAY: Williams, Shanklin. MOTION CARRIED.

2. Consider adopting a resolution ratifying the action of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of Jackie Rollins in the Workers' Compensation Court, Case No. 98-19503L. Exhibits: Resolution No. 99-86.

Vincent said Mr. Rollins received an injury to his back while working at the Wastewater Treatment Plant and he has been awarded 14% permanent partial disability, \$12,993.00. He said this would normally be on the consent agenda but the paperwork was received from the court after the agenda was published and the City has 20 days to make payment or file an appeal; the City's attorney recommends making payment.

MOVED by Purcell, SECOND by Devine, for approval of Resolution No. 99-86. AYE: Haywood, Warren, Williams, Devine, Purcell, Shanklin, Beller. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 99-86

A resolution ratifying the actions of the City Attorney in making payment of the judgment in the Workers' Compensation case of Jackie Rollins for the amount of Twelve Thousand Nine Hundred Ninety-Three and no/100s (\$12,993.00) per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

BUSINESS ITEMS:

3. Receive a presentation from Craig Paine & Associates and the KMO Development Group, Inc., on the proposed redevelopment proposal at the northeast corner of NW Cache Road and Sheridan Road. Exhibits: General Location Map.

Bob Bigham, City Planner, introduced Craig Paine for the presentation.

Craig Paine, Tulsa, said he is a commercial real estate broker and developer, and what got him intrigued and interested in Lawton was the fact that national retailers want to locate here but cannot find a location that works for them. He said his specialty is site locations and acquisitions for national retailers and that was what brought

him here to begin with. Paine said he was researching and looking for a way to get these national retailers enticed to locate stores in Lawton, and they came up with the idea that if they could build on this corner, they could build a power center that would be a wonderful thing for the City of Lawton and create a regional shopping center that does not exist here at this point in time. He said they were speaking of the northeast corner of Sheridan and Cache and that they had spoken with a number of retailers who said if they could get the site available that they would be very interested in locating there. It will be a location that will be easy for people to find, not only in Lawton but from the region.

Bruce Bolzle, KMO Development Group, Tulsa, Architect, said he would briefly discuss the site, the power center and retail center being discussed so Council would have an understanding of the magnitude of the project. He said the project is proposed for the corner of Cache and Sheridan and would be two and a half blocks deep and approximately five blocks long, making the project almost 43 acres. The selection of the site was driven by the demographics in the neighborhood and the high traffic counts on both Sheridan and Cache. He said they were stopping at a half block point to effectively buffer this type of high intensity commercial project from the remaining residential areas to the north and east.

Bolzle said the project will consist of two buildings, one large retail center with approximately 220,000 square feet comprising five to six anchor stores in approximately 60,000 square feet of small tenant space that would be national or regional commercial companies. Each large store would be national retailers that are not currently located in Lawton. The other major structure is a 160,000 square foot home improvement center. In addition to the two major projects, there are four out parcels and the candidates for those are sit-down restaurants, banks, and convenience store with gas. He said part of the block has some properties that have reached the end of their economic life and this property is a good potential, both in terms of economics and in terms of the type of financing that they would propose. He said they had determined what the State called "blighted", although that would be a word that they would not necessarily use, but in legal terms, it could be determined to be a blighted area and subject to redevelopment opportunity.

Bolzle said while it is premature to talk about what the center would look like, they had done some sketches to show the character of the project and it is of a character that has not been seen in Lawton. It is a high quality project with a tile roof, masonry exterior, a lot of landscaping, provision for pedestrian traffic and streetscaping. He presented pictures and states they show the magnitude of the retail center of the 400,000 square feet facilities.

Bolzle said they had conditional commitments from certain tenants and that the balance could be obtained when the project is started.

Purcell said it would be seem to be very expensive to purchase this property and that land is available on the east side of town, which should be much cheaper and closer to the interstate. Bolzle said a number of retailers had looked at Lawton and passed for lack of a prime site; there are sites available and the retailers have looked at them and elected not to come to Lawton, and you will achieve this type of project in Lawton only at a location like this or very, very close to this; it must be high visibility and very high traffic and centered on critical mass, meaning the area where all the other retailers are and where there is the demographic base for these retailers to market their products. Bolzle said this project will be very expensive and part of the presentation that Dan McMahan will make is how you go about making that expensive acquisition and yet make it feasible for both the City and the developer to make it work.

Paine said Dan McMahan is President of Financial Advisory Services of Oklahoma and Oklahoma's expert on tax increment financing, which is the tool they propose to use in this project, and he is an attorney and wrote most of the legislation on this subject.

Dan McMahan said this is a very ambitious project and it will only work if the City is willing to take a novel approach to financing it, and the applicant financing it, and they are suggesting that tax increment financing is appropriate here. He said some information is provided in the package on tax increment financing (TIF) and it is a relatively new financing source for Oklahoma, although it has been used in other states since the 1940's. The majority of states use tax increment financing and the City of Houston has 14 districts working now and anticipate adding six, so it is being used widely across the country. It is essential in this case that the applicant receive the kind of financing that TIF financing provides.

McMahan said there is a process you go through to set up a TIF district, and without asking anyone to make a determination tonight on the project finally, but they would ask that Council consider allowing the process to go forward. He said regardless of the City's decision on the outcome of this particular project, the City of Lawton would benefit from having a review committee established and becoming acquainted with TIF financing, if not for this project, then for other projects in the future. TIF financing would make up the difference in this very expensive acquisition and redevelopment cost.

Shanklin suggested McMahan explain the TIF financing since the meeting is being broadcast and many people are interested in this. McMahan said tax increment financing seeks to use the incremental revenues that are generated from the increased property value that is caused by the private investment being made in a given area. If we are

talking about an area with a \$10 million net assessed valuation after the private investment goes in, for example it may then have a \$30 million net assessed valuation, or roughly three times increase in property taxes, TIF financing allows you to use the increase in property taxes to help defray the costs of the public expenses that are associated with the project.

Shanklin asked if they still pay on the \$10 million net assessed value. McMahan said the land owner will pay taxes on \$30 million, or just as much as they would have if the TIF had not gone in; the taxing jurisdictions will all get the same amount that they would have otherwise received, so it is not a loss of revenue for any taxing jurisdiction. Shanklin asked if it is just no gain. McMahan said there may be; during the time of repayment of the cost, there is no gain generally speaking, but in future years, the expectation is that at some point the taxing jurisdictions will receive a bonus from the increased valuation. McMahan said these are limited by statute in their duration, and that he had not seen a TIF district in Oklahoma that had gone as long as the statute allows, and some are five or ten years but the statute allows 25 years.

Purcell asked if we were speaking of ad valorem taxes with regard to the difference of the \$10 million or \$30 million value in property. McMahan said that is just an example of how TIF financing works; in Oklahoma you can use sales taxes, hotel/motel taxes, or other fees, according to the statute. Purcell said the ad valorem does not have anything to do with the City, but you are also saying that if you have no sales to begin with, if nothing is there, then you have sales of \$30 million, are you saying the sales tax the City would collect on that \$30 million of sales would be used to finance the building, or would the City get its full portion of the sales tax on the \$30 million worth of sales. McMahan said that is ultimately a decision for the Council to make, but as part of the process, those are options that are considered by the review committee.

Purcell said, in other words, you are not asking for any money up front from the citizens but the possibility that the citizens would pay some of the sales tax that is generated through the sales of that entity would be used to pay back some of the financing, if that was agreed to. McMahan said again, a buyer would not pay any more in sales tax than they would otherwise. Purcell said he understood that. McMahan said the City, in theory, does not lose any revenues because it is only the incremental, the increase in tax revenue that is captured. Purcell said if there is nothing there now, the entire thing is an increase, although if there are some businesses there now, it might be a small difference. McMahan said these are issues that come before the review committee and quite frankly it takes some number crunching to do the work to give you the kind of answers that you need in order to make a decision. Purcell said there is no money coming from the City up-front so it is only the incremental.

Warren said in the creation of this entity, at any point is the condemnation of those properties by the City involved. McMahan said as part of the project with this kind of scope, one would almost inevitably expect some eminent domain to be required and they would propose that the City consider creating a vehicle that would have eminent domain powers for that purpose, and you may already have one in existence.

Shanklin said he was still trying to learn out this and asked if they would take some of the sales tax to help defray the cost. McMahan said the proposal that the applicant is making is that they are asking you to consider using both ad valorem and sales tax, or some portions thereof, of the incremental ad valorem or sales taxes that are generated by the private investment. Shanklin said if the area is currently paying \$10 million base assessed value, the applicant puts in a \$40 or \$50 million project but only pays on the \$10 million base assessed value until the project is paid for; he asked if that was correct. McMahan said no. Mayor Powell said the difference in the starting value and ending value helps pay for the project. Shanklin said that was what he said. McMahan said maybe he misunderstood the question. McMahan said he understood the question to be in reference to construction cost, and the \$10 or \$30 million are not intended to be estimates of construction costs. McMahan said the \$10 and \$30 million are numbers that relate to the valuation of the property before and after the project is finished, and they are important because they generate X dollars in ad valorem tax revenues; you could use the same illustration with sales taxes; you could say this is an area that is generating \$2 million in sales taxes today and may be generating \$5 million in sales tax revenue, or sales, afterwards and then there is some percentage of tax that is applied to that valuation. Warren asked if that differential would be used to pay for the condemned properties and start construction and how ever far it would go. McMahan said the City's redevelopment agency would be asked to issue revenue bonds that are payable from that revenue stream you are creating, that incremental tax revenue stream that you are creating, so over 10 or 15 years, those incremental taxes would be applied to the debt service on those bonds and the proceeds of the bonds would be used to pay the public costs, the acquisition and site remediation associated with the project.

Paine said the sales tax projection they had made at this point is significant (the number he gave was not audible). Shanklin asked what Comanche County has per year in retail sales and Paine said \$900 million in retail sales for this MSA.

Paine said they are talking about 169 properties in this area. He said if they are authorized to proceed, the time line they are trying to work under is that in October 2001, the shopping center will be open and you will be pulling people in from 100 miles away to shop.

Paine said the benefits to Lawton with this project are the regionality of the tenants they are talking about bringing in. He said it would attract residents from Altus and even further out because these shopping opportunities do not exist in Lawton and will probably never exist in a smaller community; this will help making Lawton the regional retail trade center of Southwest Oklahoma, and there is really no reason for people to have to drive to Oklahoma City any more because everything will be here.

Paine said the second point is job creation, and 600 jobs would be associated with this project. He said a lot of those jobs can be filled by service dependent people and by college students and those desiring part-time employment, so it would add some flexibility to the supply of jobs in the area, which is a healthy thing for everyone.

Paine said the third point is, and he would encourage each person to drive through this area and look at it objectively, without any bias, and if you look, you will see that the houses and the businesses over there have seen better days. He said he thought most of the stuff over there was built around World War II or shortly thereafter. Also, do me a favor and get in your car some time and drive from I-44 through Cache Road like you are coming from Fletcher to come shop in Lawton, and if you will look up and down Cache Road, you will find that the mile from Fort Sill Boulevard to Sheridan is probably the roughest looking mile of Cache Road. One of the key elements here is that they can do something that can enhance the City of Lawton through the urban renewal aspects of this project because they will take down five blocks, which is roughly one half of that mile on the north side of the road, and create something new and beautiful there that everyone will be proud of.

Paine said the last thing that he felt would be a benefit to the City of Lawton is that by this development going there, there could be additional redevelopment stimulated by this big development, and maybe some smaller things both to the east on Cache and perhaps even to the north along Sheridan all the way to Rogers Lane, and that probably could use some improvement over time too.

Paine said he had a plaque on his wall with a statement originated by George Bernard Shaw and made famous by Bobby Kennedy and it says basically that some men see things as they are and ask why, others see things that never were and ask why not. He said what he was saying to you folks tonight is why not make Lawton the trade center of Southwest Oklahoma, why not clean up a substandard area of town and create a new, beautiful development; why not create an exciting shopping environment with major, national retailers that everyone will want to shop at; there is no reason, if this happens, for the people in Lawton to want to go anywhere else; why not create 600 new jobs that could be used here in this market place, and finally, why not create future sales and ad valorem tax growth that is not here now. Paine said the agenda item does not request action tonight, but he would ask that Council consider appointing the review committee at the next Council meeting.

Purcell asked the kinds of businesses, without the names, that could be expected. He said some may be in direct competition with persons sitting in the office tonight, which is a problem for him. Purcell asked if the information could be provided and that it did not have to be given tonight. Paine said he could provide the names of those that he could receive permission from; one of the reasons that national retailers like to use his firm is the confidentiality aspect. Paine said they did mention a home improvement center and could say that it is a reality here, and the others are sectors of the retail market that are not being filled very well currently. Purcell said it would be helpful for him if he could find out, not necessarily the names, but the kind of products they were talking about. Paine said he got here early tonight and walked through the mall downtown and did not really see virtually any of those types of businesses that they would try to take and move to the new center and they are in place the way they are. Paine said if they could make this project a reality, it would help the mall's business because people are driving in from Duke or Altus or Frederick or wherever, and they would make a day of it and visit the mall also.

Mayor Powell said he appreciated the presentation and that the item did not call for action to be taken at this time.

4. Reconsider the following damage claim recommended for denial: Timothy E. & Petra E. Haungs. Exhibits: Claims Memorandum/Recommendation.

Vincent said at the last Council meeting, this item was considered on the consent agenda and we were unaware that the Haungs were in the audience and wished to speak. He said the recommendation is to allow the Haungs to speak tonight and that the staff recommendation continues to be for denial of the claim. Mayor Powell said he had received a request to speak form at the last meeting and that he was mistaken in overlooking their request so he had asked that it be brought back to this meeting. He apologized for that error and for the inconvenience caused.

Timothy and Petra Haungs, 5427 NW Cottonwood, appeared. Mr. Haungs said he was involved in an accident on February 9 and it resulted in his claim being filed. He said he had submitted police reports and pictures; the recommendation for denial was based on four major statements: 1) He was driving above the legal speed limit; 2) Before leaving the job site the City crew made efforts to remove as much dirt from the street as possible; 3) The driver's view was not obstructed by anything; and 4) The mud was readily discernible. He said regarding the first item, the legal speed limit in this area is 25 mph and he told the investigating officer that he was driving approximately 25 to 30 mph and the investigating officer wrote down 30 mph but you have to down shift to make the very sharp turn. Haungs said he was in the process of down shifting and turning the corner when he struck the

other car and that he could not have been speeding due the fact that he did not receive a speeding ticket from the investigating officer. The officer's report estimates the impact speed at approximately 10 mph.

Haungs said regarding the second item, City crews made no efforts to remove dirt from the street; pictures he took on February 11, 1999, show there was still a lot of dirt on the street. He said the mud was there for approximately four days, and he knew it was there, but the City crews were not cleaning it up and there was nothing to mark it to show that the mud was there. He said cars had been driving through there and it was during a period of a lot of rain.

Haungs said as to the third item, pictures from February 1999 and from June 21, 1999, show a bush on the right hand corner of Briarwood Drive and Briarwood Way, and that family parks their car on the street outside their house. He said the bush obstructs the view of the driver from the right hand side and causes the driver to go wide to come back into the roadway.

Haungs said as to the fourth item, the mud being readily discernible during daylight hours, it was his understanding that it was the City's duty to either remove it or warn of its presence in that mud is not a normal hazard which a citizen could expect. He said the mud was the result of crews working on a broken water main that occurred the next section up from this street. Haungs said the improper turn resulted from the mud, and that if City crews would have removed the mud, he would not have slidden into another vehicle. He said he had lived in his house since August last year and drove the street a lot going back and forth to work, and even with the car parked in the street, there is always room to turn, but due to the mud on the road and another car coming, his 1990 Chevy Blazer continued to slide across the street and hit the other car, which was also sliding, and his Blazer pushed the other car up onto the curb.

Beller said Haungs had mentioned things that he had marked as being of concern to him also. He said the memorandum states that before leaving the job site, the crew made efforts to remove as much of the dirt from the street as possible. Beller said he did not know what that meant because the pictures show there was still a considerable amount of mud and debris left on the street. He said the memorandum later states that mud was in the street at this intersection, so if they cleaned as much as possible but it is still readily discernible, why was this hazard not removed. Beller said he had looked at the intersection and read the memorandum and felt it was a valid claim.

MOVED by Beller, to approve the claim in the amount of \$1,068.96. (There was no second)

MOVED by Shanklin, SECOND by Beller, to pay the claim after it has been revised and looked over by staff in whatever figure it would be, not to exceed \$1,068.96. (adoption of resolution added below)

Mrs. Haungs presented additional pictures regarding the situation. Williams asked if Mr. Haung had insurance coverage and response was he had liability insurance only. Mayor Powell said a resolution would be needed and Shanklin and Beller added adoption of a resolution to the motion shown above.

VOTE ON MOTION AS AMENDED: AYE: Devine, Purcell, Shanklin, Beller, Haywood. NAY: Warren, Williams. MOTION CARRIED.

(Title only) Resolution No. 99-87

A resolution authorizing and directing the City Attorney to assist Timothy E. and Petra E. Haungs in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of Nine Hundred Eighty-One Dollars and 94/100 cents (\$981.94).

5. Hold a hearing to consider an appeal concerning the Administrative Order on 1916 NW Oak Avenue and affirm, reverse or modify the Administrative Order. Exhibits: Administrative Order; Letter of Appeal; Memo from Code Administration.

Dan Tucker, Code Administration Director, said an inspection of this property revealed that the easement was in violation of the City high weeds and grass ordinance in that the weeds in the easement exceeded 12". The property itself had been mowed and was cleaned up. Legal research was done to determine ownership, owners were notified and given a door knocker and the problem was abated; the administrative order was posted.

Purcell said Tucker's memo states if it needs to be mowed again, we can just go out and do it. Tucker said it is in compliance now and if it remains in compliance for six months, no further action will be taken. Purcell said another administrative order would not be done and Tucker agreed.

Warren said the appeal states that the property is cut every two weeks and asked if this was during a particularly fast growing period. Mr. Dodson said the grass was never twelve inches high and that he had told Code Administration that it was high at one point, and that to him it was five to seven inches high. Mr. Dodson said he

had pictures showing the lawn had been kept, as well as that portion of the easement, and the portion the City's inspector was referring to belonged to Parks-Jones, who sent a contractor out about two weeks ago to cut it. Mr. Dodson said that Mr. Richard Glazer does his mother's lawn every two weeks, to include the easement, lawn, and trim all the trees.

Mayor Powell asked Tucker for his recommendation. Tucker said if the property is not in violation and it is maintained, he would recommend leaving the administrative order in place, and if it is not in violation, then it is a moot point five or six months from now. Tucker recommended the administrative order be upheld.

MOVED by Purcell, SECOND by Warren, to leave the administrative order in place.

Williams asked how they determine which portion of the rear easement belongs to which property owner. Tucker said the actual end of the property line is thought to be a point between two fences, but if one property has fenced in more than the other then it is not an equitable split. Tucker said they stand in the alley and see where the majority of the property lines are because they pretty much line up.

Williams asked if property adjoining this belonged to Parks-Jones Realty. Tucker said yes, and they were also issued an administrative order.

VOTE ON MOTION: AYE: Williams, Devine, Purcell, Shanklin, Beller, Haywood, Warren. NAY: None. MOTION CARRIED.

6. Consider approving an agreement for Community Recycling between the City of Lawton and Fort Sill. Exhibits: Proposed Agreement.

Gary Jackson, Assistant City Manager, said that Council approved the agreement in concept a couple of months ago to pursue an expansion of the existing recycling operation, which primarily consists of newspapers. Collection stations are located at Greer Park and at City Hall. The Recycling Committee, chaired by Lynn Musslewhite, who is present, worked very diligently to come up with a program that increased Lawton's involvement in recycling without getting into the full scale curbside recycling. The agreement has been reviewed by the City Attorney and staff had met with legal counsel for Fort Sill; General Baxter is fully behind the agreement, as is Lt. Col. Ewing.

Jackson said the proposal is to have three recycling stations; one would be supplied by Fort Sill and two would be supplied by the City of Lawton. Possible sites for recycling stations are being considered and one would be centrally located, one on the east side of town and the other on the west. The City will have to either purchase or build two units; they can be constructed in-house for about \$3,000 per unit or they can be purchased on the market. Musslewhite has provided specifications. In-house construction would take 30-45 days per unit to construct, so the 180 days shown in the agreement would be ample time for the City to be able to provide both units. Jackson said Fort Sill should be complimented for its work, and the committee has done a great job.

Haywood asked what locations were being discussed. Jackson said potential sites discussed were at Atwood's on the west side of town, or in that general area; or continue to use the site in Greer Park where the current newspaper unit is located; another site mentioned was the Wal-Mart parking lot due to the high visibility area with the thought that there may not be a problem with illegal, after-hours dumping. Jackson said no property owners have agreed but they are seeking input on locations. Haywood said they could use some to the south also.

MOVED by Purcell, SECOND by Williams, to approve the agreement for recycling between the City of Lawton and Fort Sill and authorize the Mayor and City Clerk to execute the agreement. AYE: Williams, Devine, Purcell, Shanklin, Beller, Haywood. NAY: None. OUT: Warren. MOTION CARRIED.

Mayor Powell commended Dr. Musslewhite for chairing the committee and to Fort Sill for their extraordinary efforts. He said corporate sponsors are being sought for the recycling bins. Williams said he understood the committee had forwarded its recommendations to the Mayor and asked if it was possible to receive a copy. Mayor Powell said he received several things from the committee and would provide copies. Purcell also commended Musslewhite for his help.

7. Consider co-sponsoring the efforts of the Community Playground Committee to raise funds to construct a community built park on the Southeast corner of 35th Division Park (NW 6th and Dearborn); to further consider taking ownership of this playground and to assume all maintenance responsibility and the responsibility to have the entire park meet all ADA requirements. Exhibits: Community Playground Video; Map of proposed site of playground; Consultant's drawing of playground facility; Example of proposed sign; Map of proposed location of sign. (exhibits presented at meeting only)

Gary Salva, Parks & Recreation Director, said on February 23, 1999, Council approved designating the southeast corner of 35th Division Park as the site for the Community Playground. He said Mark Glenn chaired the committee

and made the proposal. Video of a similar playground was presented, as well as aerial photos of the site and the proposed design concept. \$190,000 will be needed for this project; \$50,000 was requested from the City and Council did not act on that request but only agreed to the location and for the Mayor to appoint Glenn as the coordinator.

Salva reported the committee had met and raised over \$25,000, brought in a consultant for the design of the park, and the consultant received input from many local elementary school students to aid in the park design. He said the project was expanded to include meeting ADA requirements. Salva said the committee wanted to erect a sign, and an example of such a sign was posted on the back wall of the Council Chambers. The sign would be at 11th and Gore, for better visibility, or at the park site itself.

Salva said the questions are whether the City wants to cosponsor this project, which will allow for construction of the sign and the City logo would be on the sign; does the City wish to accept the overall maintenance responsibility of the new park after its completion; and if the fund raising efforts are successful and the construction of the park takes place, is the City willing to make the entire park and adjacent areas ADA accessible. He said a restroom would need to be made ADA accessible, as well as the interior pathways being reconstructed, certain modifications may have to be made on the playground, appropriate on-street parking would have to be created allowing for ADA accessibility. He said these are the questions at hand.

Warren said an east side park is being planned, and it will have to be ADA accessible. He asked if the group would consider moving this project to the east side park, and allowing this to be the first building block for that new park.

Mark Glenn said he was flexible. He said he had received a number of calls and comments suggesting the location be changed, but the preferred location by most of those providing input was that it be built in Elmer Thomas Park. Glenn said he called Mike Brown because he is building the bike path in Elmer Thomas Park and asked him if he thought it was acceptable to have the playground by the bike path and that Brown thought that would be acceptable and that he planned to meet with Brown to look into it further.

Warren asked if Elmer Thomas Park is currently ADA accessible. Vincent said ADA accessible restrooms will be required regardless of the location selected, as well as accessibility to get from the parking lot to the playground; the majority of the items in the playground must be ADA accessible, but not all of them. Warren asked if the bike path can be done in Elmer Thomas Park without further ADA requirements for that park, or are those accommodations already in place. Vincent said the changes are already in place; the ADA requires that the new facility be ADA accessible as much as is feasible, and that slides which have stairs is an obvious example of a facility that cannot be accessed by everyone, but to the maximum extent possible, it must be ADA accessible. Warren asked if there would be restroom problems if it were moved to Elmer Thomas Park. Vincent said he did not know if there were restrooms at Elmer Thomas. Warren asked if the City would have to build restrooms and Glenn said restrooms are needed for the park. Warren said that would seem to make the east side park a logical choice and Shanklin said funds are not available for an east side park. Shanklin suggested Grand View Park and Warren said there are parking problems now at that facility.

Beller asked if there would be ADA problems in Elmer Thomas Park due to the bike path. Vincent said the bike path was designed by the State to be ADA compliant. Beller asked if the entire park would have to be in compliance. Vincent said the total park does not have to be ADA accessible, but the bike path does because it is the new facility; whether you amend the existing facility depends on the cost, the necessity, and there are exceptions to the ADA requirements depending on items such as the age of the facility and it may or may not have to be made accessible. Warren asked if the restroom requirement was solely for the playground and Glenn said yes. Vincent said the wading pool at 35th Division Park would not have to be made ADA accessible as a result of the playground. Warren said the ADA requirements would be the parking and the pathways in the park and the restroom.

Glenn said since the Council meeting in February, the committee had raised \$4,000; \$2,500 was spent to fly the architect in from New York. The architect toured the City and went to Whittier, Washington and Douglass schools and met with the children, and the children's ideas are incorporated into the playground. He said the children wanted the handicapped children to be able to play in the park, and that has increased the cost but it should be done and it was incorporated into the playground. Design Day was May 13 and that evening there were 250 people, parents and children, on hand for the showing of the blue print. Glenn presented the blue print and an image showing what the playground would look like. He said since then, many people have told him that they were uncomfortable with the location and asked that it be moved to Elmer Thomas Park, and that the potential donors were waiting to see if the City would accept the maintenance responsibility and look at moving it to another location. Shanklin asked if Glenn was referring to the McMahon Foundation and Glenn said that several civic clubs were becoming involved, as well as the McMahon Foundation.

Purcell said he always felt the City would maintain it if it was built and that it would be on City property. He said he had a problem with the location also at first but agreed because the park had the trees that were needed. Purcell said he would like it on the east side, but would agree that Elmer Thomas Park was a better location because of parking. He said he was hoping that it was understood that if the City agrees to be a sponsor that it does not

necessarily mean funds will be contributed initially. Purcell said he felt the City should maintain it after it is built and give staff support to help it get established as long as the group raises the total \$190,000 needed and do it in Elmer Thomas Park.

Shanklin said it was his understanding that CDBG could provide some funding and asked if that would also be available if it were built in Elmer Thomas Park. Warren asked if there was an estimate on the costs for the restroom. Glenn said he did not know and Salva said there is not a restroom facility in Elmer Thomas Park.

Mayor Powell asked if Glenn needed answers tonight on permission to put up the sign and its location. Glenn said yes, and that he would like the funding to be considered. Glenn said Norman contributed \$40,000 through their Parks & Recreation Department. Mayor Powell said the questions are the sign, the funding, assuming all maintenance after construction, and the option to move the playground to Elmer Thomas Park.

Frank Pondrom, Housing and Community Development Director, said the project was proposed for 35th Division Park, and historically that park serves an area of low and moderate income persons and therefore any improvements to the park would be eligible for CDBG funding. He said moving the project to Elmer Thomas Park would put it in a different category because it serves the entire community, and the actual service radius would have to be reviewed and may not be eligible. Williams asked if the service radius could be adjusted to allow funding for the project. Pondrom said he looks carefully at service areas and HUD looks at them carefully also, and Elmer Thomas Park is considered the main City park to serve the entire City so it would be hard to overcome that designation. Pondrom said the radius for a neighborhood park is easier to determine and that he could look further at Elmer Thomas Park but felt it could raise some questions with HUD. Shanklin said there were low income areas in the vicinity of Elmer Thomas Park. Pondrom said he could provide information as to the low and moderate income areas of town.

Salva said the City currently has four community park by nature of their size, being Elmer Thomas Park, Greer Park, McMahon Park and the east side park. He said it is appropriate for a facility named a community playground to be located in one of the community parks. Salva recommended staff be allowed to do research and form a position statement and make a recommendation to the City Manager as far as the location of the playground. He pointed out that, if the City will be a cosponsor, the City logo would appear on the sign and stated the City Attorney had told him that the City had to be a cosponsor for the sign to be put up at their requested location of 11th and Gore or on any City property.

Beller said he had received pictures of two parks in Texas and they seemed almost identical to this, and in both cases, they contained fencing. He suggested the fencing be considered. Beller asked if these were copyrighted park plans that the architect sells and if he sells the same plans to each city. Glenn said each park is unique based on the children's ideas. Beller said apparently the children in each city have the same ideas according to the pictures, and maybe the cost of the plans was too high but that has already been done. Salva said the firm had worked with 250 communities in constructing parks of this nature, and the firm has been around for years and published articles nationally and had programs on public television.

Williams said he had always supported the park concept but had never agreed with the proposed location due to the parking limitations. He said he did not care where it was located as long as there was room for parking and room to grow. Williams said he thought the community would support the project financially and that it may be more beneficial if the City logo was not on the sign because people would think the City was funding the project. Vincent said the City logo would be an indication that the City would be a cosponsor, and that the City logo does not have to be there but in order for the sign to be on City property, the City must be a cosponsor or change that rule.

Purcell said he had no problem with the sign or with the City being a cosponsor, but if this is going to go in Elmer Thomas Park, there is still a major problem having a playground in Elmer Thomas Park due to the prairie dogs because they are all the way over to Ferris and they are there by the hundreds. He said they had received information on relocation efforts but this park cannot co-exist in Elmer Thomas Park the way it is today with the prairie dog problem. Purcell said that should be considered in forming the recommendation.

Beller spoke in favor of providing funding and felt people would come to town to visit the park. He said the City could not provide all of the funding but should be able to find some through the department to help with the project.

MOVED by Warren, SECOND by Devine, to cosponsor the sign.

Williams asked what the meant. Warren said we have to have some input into the sign so it can be placed on the City's right of way.

Baker suggested if Council wants to cosponsor, it would be advisable to cosponsor the project with no commitment of funds at this time; this would allow the sign to go up and allow the visibility to start collecting the funds. He suggested authorizing the sign at the preferred location and also committing that the City will accept the

ownership and maintenance responsibilities once it is completed. Baker said he felt that was important to be done tonight even though funds are not committed or the exact location is not known, but it would allow the group to proceed and the contributors are waiting for the Council to take those actions before coming forward with donations.

Warren asked that his motion be amended to reflect Baker's suggestions; Devine agreed as the second.

AMENDED MOTION by Warren, SECOND by Devine, to cosponsor the project with no commitment of funds at this time; allow the sign to be erected at 11th and Gore Boulevard, and to accept ownership and maintenance responsibility once the project is completed. AYE: Devine, Purcell, Shanklin, Beller, Haywood, Warren, Williams. NAY: None. MOTION CARRIED.

8. Consider a request for a median opening at SW 12th and Lee Boulevard. Exhibits: Site Plan.

Marsha Hinds, Traffic Engineer, said a request was received for a median opening at SW 12th and Lee Boulevard. The original request was from Woody's BBQ. A view graph was reviewed concerning traffic patterns in the area. There is currently a left turn bay for 11th Street and the request is to construct a median opening at 12th Street. Hinds said the request was reviewed in accordance with Council Policy 8-2 and it did not meet the stipulations so it is presented for Council action to waive the requirements.

Hinds said the concern on the design is that if this request is approved, and the location is opened that the queuing for the left turn bay for 11th and Lee will be blocked. Safety concerns are that if a car is choosing to pull into 12th Street and awaiting traffic coming from the east, those wanting to make the 11th Street light would be backed up behind them or go around and cause major congestion in the area.

Beller asked if the concern was that there would not be enough room for cars to que up for the left turn at 11th and Lee to go north. He said it is one of the longest left turn lanes in town and that he had watched the area for 45 minutes and did not see a large number of cars waiting in that turn lane or backed up to the point where they were requesting the median cut.

Purcell said the applicant wants traffic to be able to make a left turn from Lee onto 12th Street. He asked if traffic going south on 12th Street would also be able to make a left turn onto Lee Boulevard. Hinds said yes. Purcell said the rear of the car would be sticking out into the west bound lanes of Lee because cars would pull out into the median and wait until traffic allowed them to proceed west and there is not room for that to be done. Purcell agreed the left turn lane in place now is very long but during the noon hour, cars are backed up in the left turn lane past the entrance to 12th Street, so cars would be blocking the lane.

Devine said the same problem would be created one block down because a similar median opening had already been approved for the new Eckerd Drug at 11th and Lee. He said it was not right to approve something for one business and not another. Hinds said the Eckerd store would have a median opening but not cut across an existing turn bay. Devine suggested signs could be put up to place some of the responsibility on the drivers.

Williams said Council has approved a number of curb cuts to help with economic development and to help business owners. He said he felt something could be worked out and they should weigh the economic impact on the business, as well as Goodwill Industries, as well as the space allowed.

Purcell said he looked at Eckerd's also and the cars do not seem to back up when they are going west on Lee turning south on 11th, but the lane on the east side where cars wait for north turns is long but used by a lot of traffic. Devine asked how far Eckerd's is from the intersection and Warren said it is a block to the east.

Warren said he usually agrees with median cuts but could not agree to this unless they included a no left turn sign off of 12th Street.

Haywood said there is a light at 13th Street to cut down on the congestion. He said he was raised by the owners of John & Cook's. Haywood asked if staff felt the request would cause traffic problems. Hinds said until something is built, you do not know for sure how many problems will come up, but looking at the general layout, they felt there would be some problems. She said a no left turn sign for traffic trying to enter westbound Lee from 12th Street would not do any good and you would need some type of an island which would force traffic to turn right.

Richard Hixson, owner of Woody's BBQ, said one of the reasons that traffic is backed up in the turn bay going to 11th Street during lunch hour is due to patrons trying to get to his restaurant, and they currently need to turn on 13th Street, go down to 11th and turn back to get there. He said they asked for the opening to have left or right turns for the same reason; going up the street, around the block on a side street to get back on the highway to keep going. Hixson said it would make it much easier for the traffic and would help those trying to get to Goodwill Industries. He said it would be an advantage for his business and would also keep a lot of the traffic off of the side streets.

Shanklin said traffic is not making the left turn on 12th now and that it would create a liability, and that traffic would have to be forced to make a right hand turn if the median were cut. Beller asked if the no left turn sign would work and Haywood said the street is not wide enough. Purcell said cars back up at noon in the left hand turn lane in existence now to turn left, or north, onto 11th Street; if you open the median on 12th Street, traffic will be stopping on Lee waiting to get into the left turn lane for 11th Street so there is a problem on both sides of the road in this particular location. Devine said some of the traffic is trying to get to Woody's, so it could be partially good and partially bad. Williams said you cannot get from 13th Street to 11th Street and make the light, so traffic is blocked in and maybe the timing of the signal could be adjusted to allow the traffic to get through the turn.

MOVED by Beller, SECOND by Devine, to approve the request for a median opening at SW 12th Street and Lee Boulevard as requested by Richard Hixson, Warren and Landmark Engineering.
SUBSTITUTE MOTION by Purcell, SECOND by Warren, to deny the request.

SECOND SUBSTITUTE MOTION by Shanklin, SECOND by Devine, to allow the cut if they pour the concrete barrier to make people make a right hand turn 12th onto Lee Boulevard if they are coming from 12th Street to go to the west.

Mayor Powell asked Hinds if that was possible. Hinds said it is up to the requestors to decide if they want the median cut under those conditions because the requestors must pay all of the expenses involved in the work.

VOTE ON SECOND SUBSTITUTE MOTION: AYE: Shanklin, Beller, Williams, Devine. NAY: Purcell, Warren.
ABSTAIN: Haywood. SECOND SUBSTITUTE MOTION CARRIED.

9. Consider opening Bark Avenue as a public street, securing necessary rights-of-way and determine a funding source to reconstruct to City standards. Exhibits: Location Map of Bark Avenue; Letter from Adjacent Property Owners.

Warren said staff had returned figures and a recommendation, and the estimated cost of roadway reconstruction would be \$65,000; staff recommendation was not to accept the roadway or pay for the improvements. He suggested if Council does not accept the roadway that the businesses may need to invest in a large gate and lock it every night, and that cars would be stacked up because the people use the street as a turn around. Warren said it is an advantage to have this as a public street and that the City has been taking care of it over the years as far as fixing the potholes and that it should be accepted for dedication.

Williams said he did not have a problem taking it over if it came to the City in good shape. Warren said the City is the one that has been taking care of it, or at least making that effort, even if it was poor.

Devine said he told a person today that he would not be opposed to accepting dedication if the business owners would fix the roadway first. He said the City created the turnaround problem due to the traffic patterns and suggested the City and business owners each contribute a percentage of the cost of repairs and the City then accept the roadway.

Shanklin asked how many businesses along Cache Road would be assisted by this repair, and suggested that businesses whose customers use the roadway as a turnaround would be interested in helping with payment of the construction costs. Shanklin said the residents of Ward 5 have no particular interest in paying for someone else's roadway. Devine said it is a major traffic problem.

Beller asked if staff could provide a closer cost estimate. Mayor Powell said the roadway would require a cul de sac at the end and it could involve a substantial amount of property from the property owners in the area and that those property owners should realize that and it could be a problem. Purcell said he thought that \$65,000 sounded high also, considering what staff did on Flowermound Road for two miles, and that a gate on that roadway could solve the traffic turnaround problem.

Warren said staff's estimate was based on bid figures used in the past as far as contracting out the work, and assumed it would include curb and gutter and normal standards. He said the gate would only cut off traffic from 6:30 p.m. to 8:30 a.m. and the daily traffic still comes through there when these businesses are open; they could put down asphalt but the cars would eat it back out.

Ihler said the \$65,000 cost estimate was based on a contract price from a contract that was bid about a month ago.

Warren asked that he be allowed to table the item until staff could bring back a detailed figure of what it would cost to do this in-house, both materials and labor.

Mayor Powell suggested a survey be done to show exactly how much of the land would be taken by the City to put this roadway in, and that it could surprise people as to what they would not have left and whether they are willing to dedicate the land. Beller said they submitted a letter saying they would donate the needed land at no cost.

Mayor Powell said he understood but they may not know what is involved.

MOVED by Warren, SECOND by Shanklin, to table the item until staff could bring back a detailed figure of what it would cost to do this in-house, both materials and labor. AYE: Shanklin, Beller, Haywood, Warren, Williams, Devine, Purcell. NAY: None. MOTION CARRIED.

10. Discuss revocable permits as described in the City Attorney's memorandum and provide guidance to staff. Exhibits: City Attorney's 6/28/99 Memorandum.

Shanklin said Council had been told in the past that it did not have the right to issue revocable permits in certain instances. He asked when the Council became limited in issuing revocable permits.

Vincent said prior to 1994 there was an unwritten policy where revocable permits were issued allowing certain things to take place in rights of way and in easements; with the passage of an ordinance in December 1994, the Council stopped issuing revocable permits except in limited instances which were permitted in that ordinance.

Shanklin said he would prefer to have the unlimited authority that existed previously. Vincent said an ordinance can be drafted to provide some authority, but that he would be sending out a memorandum tomorrow based on a case issued by the Supreme Court in 1995, there are only certain things that can go into a right of way or an easement.

MOVED by Shanklin, SECOND by Williams, to table this item to the next meeting. AYE: Beller, Haywood, Warren, Williams, Devine, Purcell, Shanklin. NAY: None. MOTION CARRIED.

11. Consider assessing liquidated damages, accepting the Water Treatment Plant Clarifier Painting Project 97-12 as constructed by Luckinbill, Inc. and placing the Maintenance Bond into effect. Exhibits: None.

Ihler said in September 1997 the City awarded a painting project at the Water Treatment Plant to Luckinbill; the project consisted of painting the two north plant clarifiers and also the filter backwash storage tank. The contract time was set at 180 days and set up so that the work would be performed during the low usage demand and because we needed to have the Water Treatment Plant back on line by the peak summer demand season, we put a high liquidated damages figure on that particular project, and it was set at \$1,000 per day. The contractor was not able to complete the project in 180 days and were in fact 80 days over the contract time. The contractor finished the first clarifier only during the winter months, and all work was stopped so both clarifiers could be brought back on line and then shut it down again the following winter months when usage demand was lower; therefore, the contractor was 80 days over. Total amount of liquidated damages would be \$80,000. Ihler said there is a fine line in determining when liquidated damages would become a penalty, which becomes a potential legal problem, therefore, when they got closer to finishing the project, payments were stopped because it was clear that they were beyond the time allowed to finish and the City is currently retaining \$53,000 of that \$150,000 project. Ihler said based on discussion with the attorneys and the fact that the City is holding \$53,000, it is staff recommendation to access liquidated damages not in the amount of \$80,000, but the \$53,422.50 that is being held.

Williams asked if it was legal to hold the contractor's money based on them being beyond a particular time table when there is a liquidated damages clause. Vincent said yes, there is a retainage clause in the contract. Williams said \$53,000 of a \$150,000 contract was more than 30% retainage. Ihler said the retainage is usually 10%.

Purcell said you have in the contract that it will cost \$1,000 per day, regardless of the value of the contract, and the contractor delays by 80 days. He said it is a huge amount of liquidated damages, over 50% of the contract, but asked why it was considered a penalty when it was stated up-front when the contract was signed and everyone knew exactly what the liquidated damages would be. Vincent said at a certain point, even though liquidated damages is in the contract at a certain amount, the liquidated damages can become a penalty when it is not really to offset damages suffered by the City but becomes a penalty for poor performance. Vincent said liquidated damages are stated in the contract because it is difficult to ascertain the actual damages suffered by the City through their non-performance, and that is why you have a liquidated damage clause. Vincent said when it becomes a penalty is when the City did not actually suffer any damage, it would be a penalty versus liquidated damages.

Beller asked if the liquidated damages clause was for the purpose of the contractor not performing to the specifications to complete the job in a certain number of days. Vincent said yes. Beller asked if that was legal and Vincent responded yes. Beller asked where there was a problem and Vincent said at some point, and that he was not saying that there would be a problem but there is a concern. Vincent suggested that an appropriate motion would be that the City not waive the other \$27,000, but take the \$53,422.59 as liquidated damages and if the firm sues the City, the City would file a counter claim for \$27,000.

Shanklin asked what the problem was with the contract and stated the firm knew the deadlines. Ihler said the project took 374 days; we subtracted 114 days for bad weather; the contractor actually worked 183 days on the

project. Ihler said there were 77 good weather days that the contractor could have worked but did not show up to the project site. Shanklin asked if staff discussed it with the contractor. Ihler said yes, as soon as they got close to the time frame and saw that there would be a major problem, they had discussions with them at the end of the first winter period when they finished only one clarifier. Ihler said staff pointed out at that time that there would be a problem with liquidated damages if they did not come back and perform in a better fashion in the second time frame but it did not cause them to complete the second half any faster.

Vincent said he wanted to make Council aware of another problem and that they were pursuing collection of damages to City equipment from over spray because while spraying the clarifiers the contractor got paint on two City truck, and sixteen City employees' vehicles. The employees have been advised on how to complete their claims against this company. Beller asked if that would have any effect on this and Vincent said no, but he felt Council needed to know that information.

MOVED by Beller, SECOND by Purcell, to approve assessing liquidated damages based upon the contract in the amount of \$80,000, and accept the Water Treatment Plant Clarifier Painting Project as constructed by Luckinbill, Inc. and place the maintenance bond into effect, and to instruct the City Attorney's office to seek recovery of the additional funds.

Williams asked if this company did the actual work or if it was subcontracted out. Ihler said it was his understanding that this company actually did the work. Ihler said in the late 1980's when the water plant rehabilitation was done, the same project was done and the same company did the painting then, so they were familiar with what they were getting into and knew the scope of the project.

Williams asked if the company knew that Council would be considering this item tonight. Ihler said they had been talking with them for months regarding the liquidated damages and sent a letter about three weeks ago telling them that this item would be on the Council agenda and staff was recommending the \$53,000 but that they would get back with them after Council action.

VOTE ON MOTION: AYE: Haywood, Warren, Williams, Devine, Purcell, Beller. NAY: Shanklin. MOTION CARRIED.

CONSENT AGENDA:

12. Consider the following damage claim recommended for denial: Yuki Jenkins. Exhibits: Legal Opinion/Recommendation. Action: Denial of claim.

13. Consider the following damage claims recommended for approval and consider passage of any resolutions authorizing the City Attorney to file a friendly suit for claims which are over \$400.00: Albertis and Deloris Blackwell; Patrick A. and Celeste A. Culver; Bill and Marsha Gomez; Betty Means. Exhibits: Legal Opinions/Recommendations. (Three resolutions on file in City Clerk's Office) Betty Means - \$52.50

(Title only) Resolution No. 99-88

A resolution authorizing and directing the City Attorney to assist Albertis and Deloris Blackwell in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of One Thousand One Hundred Ninety-Nine Dollars and 54/100s (\$1,199.54).

(Title only) Resolution No. 99-89

A resolution authorizing and directing the City Attorney to assist Patrick A. and Celeste A. Culver in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of Four Thousand Four Hundred Thirty-Eight Dollars and 31/100s (\$4,438.31).

(Title only) Resolution No. 99-90

A resolution authorizing and directing the City Attorney to assist Bill and Marsha Gomez in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of Four Hundred Sixty-Two Dollars and 10/100s (\$462.10).

ITEM 14 WAS CONSIDERED AS SHOWN BELOW.

15. Consider denying requests for the installation of traffic control devices at specified locations. Exhibits: Excerpt from 6/17/99 Draft Traffic Commission Minutes. Action: Deny the following requests: 1) Install "Children at Play" signs along 4500 block of NW Denver Ave.; 2) Install "Children at Play" signs along the 7900 block of Crossland Circle; 3) Install "Children at Play" signs along 2500 block of Robin Hood Drive; 4) Install "Children at Play" signs along the 1100 block of SW 45th Street.

16. Consider adopting a resolution ratifying the action of the City Attorney in filing and making payment of the

judgment in the Workers' Compensation case of David R. Schucker in the Workers' Compensation Court, Case No. 98-3687H. Exhibits: Resolution No. 99-91.

(Title only) Resolution No. 99-91

A resolution ratifying the actions of the City Attorney in making payment of the judgment in the Workers' Compensation case of David R. Schucker for the amount of Seventeen Thousand Two Hundred Fifty-Three Dollars (\$17,253.00), per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

ITEMS 17 AND 18 WERE CONSIDERED SEPARATELY AS SHOWN BELOW.

19. Consider approving a resolution modifying positions allocated in the FY 1999-2000 Fiscal Year Municipal Court budget and declaring an effective date. Exhibits: Resolution No. 99-92.

(Title only) Resolution No. 99-92

A resolution modifying positions allocated in the FY 1999-2000 Fiscal Year Municipal Court budget, and declaring an effective date. (Adds one full-time Clerk III position and deleted one part-time Clerk III position effective July 13, 1999)

20. Consider authorizing City of Lawton participation in the South Central Oklahoma Workforce Investment Area and authorize the Mayor to sign the agreement. Exhibits: Proposed Consortium Agreement. Action: Authorize Lawton/Fort Sill participation in the Local Elected Officials Consortium of the South Central Oklahoma Workforce Investment Area and authorize the Mayor to sign the consortium agreement.

21. Consider approving a lease agreement between the City and Lawton Public Schools for the mutual free use of designated recreation facilities. Exhibits: Lease Agreement. Action: Approve the lease agreement between the City and the Board of Education that will allow for the continuation of this cooperative agreement to share facilities, at no cost, for designated events and programs that will assist in providing for the leisure needs of the Lawton community.

"Background: The City of Lawton has, for a number of years, entered into a cooperative agreement with Lawton Public Schools for the joint use of recreation facilities. This agreement allows the City's Parks and Recreation Department to use the following LPS facilities: 1) Twenty-two (22) gymnasiums for practice and games; 2) Ron Stephens Stadium for selected football events; 3) Lawton High School and the Eisenhower High School tracks; 4) Lawton High School Baseball field and the Kiwanis ball fields.

The agreement also permits the Lawton Public Schools to use the following Parks & Recreation facilities: 1) McMahon Complex (girls softball games & cross-country meets); 2) Grand View Sports Complex (softball & baseball program); 3) Soccer field; 4) Ahlschlager Fields at 17th and G Ave.; 5) Owens Multipurpose Center & Town Hall for GED and Adult Education Classes; 6) Parks and Playgrounds for field trip use."

22. Consider waiving Council Policy 5-2 and consider entering into an agreement for the sale of treated water outside the City limits with the Tri-Creek Water Association, Inc. located at approximately SE 60th Street and SE Coombs Road. Exhibits: Letter of Request; Location Map; Excerpt of Committee Minutes; Excerpt of Council Policy 5-2; Agreement. Action: Waive the provisions of Council Policy 5-2 and approve the agreement for the sale of treated water outside the City limits with the Tri-Creek Water Association, Inc.

ITEM 23 WAS CONSIDERED SEPARATELY AS SHOWN BELOW.

24. Consider approving plans and specifications for the McMahon Auditorium ADA Access Project 99-15 and authorizing staff to advertise for bids. Exhibits: Location Map. Action: Approval of item.

25. Consider accepting General Facilities Phase I Project #97-13 (Patterson Center) as constructed by Boyles & Associates, Inc. and placing the Maintenance Bond into effect. Exhibits: Location Map. Action: Approval of item.

26. Consider accepting Central Fire Station Renovation Project #97-16 as constructed by Kent Waller Construction and placing the Maintenance Bond into effect. Exhibits: Location Map. Action: Approval of item.

27. Consider accepting General Facilities Phase I Project #97-13 (City Hall) as constructed by Robust Construction L.L.C. and placing the Maintenance Bond into effect. Exhibits: None. Action: Approval of item.

28. Consider awarding a construction contract to Mike Grooms Floor Covering for the Library Carpet Project #99-14. Exhibits: 6/22/99 Bid Tabulation; Memo from Library Director. Action: Award a construction contract to Mike Grooms Floor Covering for the Library Carpet Project #99-14 in the amount of \$92,253.00.

"Background: On July 1, 1997, City Council authorized funding for construction of the Library Carpet Project #99-

14. The project consists of approximately 4,000 square yards of carpet tiles for the Lawton Public Library. Funding for this project is from Fund 35 (Account #359700321482 with a balance of \$164,082.01). It should be noted that this balance also includes funding for a future library lighting project.

On June 22, 1999, the following bids were received and opened:

Engineer's Estimate \$90,000.00
Re:Source Oklahoma \$87,780.00
Mike Grooms Floor Covering \$92,253.00

The carpet proposed by Re:Source Oklahoma does not meet the required product specifications, therefore its bid is non-responsive. Also, they are proposing using carpet tiles which have only a strip of "peel-off" adhesive on the backing. The other contractor, Mike Grooms Floor Covering, proposes using carpet tiles which meet the required product specifications. Grooms proposes using carpet tiles which have "peel-off" adhesive on 100% of the backing. The Library Director has requested that the contract be awarded to the low responsive bidder, Mike Grooms Floor Covering (see attached memo).

Mike Grooms Floor Covering has not had a contract with the City in the past 24 months."

Body of Memo from Library Director: "Having reviewed the Library Carpet bid, I would like to request that the City Council consider awarding the library carpet bid to Mike Grooms who meets all the specifications. The only other bidder (Re:Source Oklahoma) did not meet the specifications in the following areas: 1) Tuft Gauge in 5/64 - specification required 5.33/64; 2) Stitches per inch is 9.00 per inch - specification required 11.5 per inch; 3) Total weight is 145 oz. per square yard - specification required 156.1 oz. per square yard plus or minus 5%. Thank you for your assistance with this project, and place call if there are any questions."

29. Consider acknowledging receipt of permit for the construction of a sanitary sewer line from the Oklahoma State Department of Environmental Quality to serve the Grayson's Mountain Estates, Faircloud, and Creekwood Additions, City of Lawton, Comanche County, Oklahoma. Exhibits: None. Action: Approval of item. "Background: On June 26, 1999, the City of Lawton was granted Permit No. SL000016990511 from ODEQ for construction of ten (10) inch PVC sanitary sewer line plus all appurtenances to serve the Grayson's Mountain Estates, Faircloud, and Creekwood Additions, Comanche County, OK. This construction is a sewer relocation project required for the B-1 Reservoir construction. A condition of the permits is that they must be noted in the minutes of the next regular meeting of the Lawton City Council. The permit is on file in the City Clerk's Office."

30. Consider a proposal from Lawton Mobile Meals for services for FY99-00, and enter into an agreement for services. Exhibits: None. Action: Approve an agreement between the City and Mobile Meals, Inc. for services to the homebound elderly and/or handicapped citizens of Lawton for 1999-2000 in the amount of \$40,000 and authorize the Mayor and City Clerk to execute same.

31. Consider a proposal from the Center for Creative Living Corporation for services to senior citizens for FY99-00, and enter into an agreement for services. Exhibits: None. Action: Approve an agreement between the City and the Center for Creative Living Corporation for services to senior citizens for 1999-2000 in the amount of \$13,214.00 and authorize the Mayor and City Clerk to execute same.

32. Consider entering into a professional services agreement between the City and James C. Ferguson of Walker, Ferguson and Ferguson for Workers' Compensation claims. Exhibits: None. Action: Approval of agreement as shown.

33. Consider approving a retainer agreement with the firm of McAfee & Taft to represent the City in a pending contract interest arbitration between the City of Lawton and International Union of Police Associations, Local 24. Exhibits: None. Action: Approval of agreement as shown.

34. Consider approving contract for the following to participate as performers at the 1999 International Festival and authorize the Mayor and City Clerk to execute the agreements: James Gilyard Ensemble, Khenany, Los Caballeros, Russian Kaleidoscope, Ragas & Bayas, and Ruchira & Shan Bhattacharya. Exhibits: None. Action: Approval of contracts as shown.

35. Consider approving a contract with Neva through World Artists to present two school performances and one public performance of Russian dances at McMahon Memorial Auditorium on November 8, 1999. Exhibits: None. Action: Approval of contract as shown.

36. Consider approving contracts for the Cosponsorship Program. Exhibits: None. Action: Approve contracts for the Cosponsorship Program with Lawton Community Theater, Lawton-Fort Sill Art Council, Southwest Oklahoma Dance Alliance, Comanche Indian Veterans' Association and Percussive Arts Society.

37. Consider entering into contracts for fire protection outside the Lawton City limits with Mr. Henry F. Smith, Sr.; Mrs. Jenny Loveless; Mr. Don Greb; Mrs. Ingrid K. Davis; and authorize the Mayor and City Clerk to execute the contracts. Exhibits: None. Action: Approval of contracts as shown.

38. Consider awarding contract for Van. Exhibits: Recommendation; Bid Abstract. Action: Award contract to Billingsley Ford in the amount of \$23,332.00.

39. Consider awarding contract for Coagulant Aid Clay. Exhibits: Recommendation; Bid Abstract. Action: Award contract to Industrial Chemicals, Inc., sole bidder.

40. Consider awarding contract for Rental Equipment. Exhibits: Recommendation; Bid Abstract. Action: Award contract to C.L. Boyd Co., Inc. of Lawton, OK (Items 1 and 3); ICM of Oklahoma City (Item 5); Secor of Houston, TX (Item 7); TT Technologies, Inc. of Aurora, IL (Item 8).

41. Consider awarding contract for Electro Fusion Polyethylene Fittings for DR 17 Pipe. Exhibits: Recommendation; Bid Abstract. Action: Award contract to TT Technologies, Inc. of Aurora, IL (Items 1 and 2); Cooper Wholesale, Inc. of Pryor, OK (Item 3); Secor of Houston, TX (Item 4).
ITEM 42 WAS CONSIDERED SEPARATELY AS SHOWN BELOW.

43. Consider rejecting bid for Agricultural/Grazing Sublease Agreement - Tract E-23. Exhibits: Recommendation; Bid Abstract; Letter from Phillip London. Action: Reject bids.

44. Consider approving the following contract extensions:

- A) Rental of Cleaning Supplies with Western Uniform & Towel
 - B) Road Oil CRS & Asphalt Emulsion SS-1 with Koch Materials Company
 - C) Anhydrous Ammonia with Co-op Services, Inc.
 - D) Rental of Portable Restrooms with ARA Equipment Rentals
 - E) Hand-Held Radar Units with Decatur Electronics, Inc.
 - F) Wireless Communication Equipment with Precision Services Group
 - G) Machine Shop and Welding Services with Lawton Machine Welding Works, Inc.
 - H) Radio Transmission with AF CommSupply
- Exhibits: Fact Sheet. Action: Approval of item.

45. Consider approval of appointments to boards and commissions. Exhibits: Memorandum.

Lawton Arts & Humanities Council: Boyd Fisher (6/30/02); Allison White (6/30/02); Nancy Anderson (6/30/02); Mark Norman (6/30/02); Towana Spivey (6/30/01)
Lawton Metropolitan Area Airport Authority: Keith Bridges (2/13/2002); John Marco (9/9/00)

46. Consider approval of payroll for the period of June 28 through July 11, 1999.

Mayor Powell asked that Item 23 be considered separately. Shanklin asked that Items 23 and 42 be considered separately. Warren asked that Items 17 and 18 be considered separately. Williams asked that Item 14 be considered separately.

MOVED by Shanklin, SECOND by Warren, for approval of the Consent Agenda items as recommended with the exception of Items 14, 17, 18, 23 and 42. AYE: Warren, Williams, Devine, Purcell, Shanklin, Beller, Haywood. NAY: None. MOTION CARRIED.

14. Consider a resolution authorizing the installation of traffic control devices at specified locations. Exhibits: Resolution No. 99-93; Excerpt from 6/17/99 Draft Traffic Commission Minutes.

Williams asked the location on Oak regarding the proposed No Parking signs. Marsha Hinds, Traffic Engineer, said it is the short segment of street by Golden Corral, north of Bakers Supermarket and the request was due to overflow parking from area restaurants. She said the restaurants were not opposed to the No Parking signs.

MOVED by Williams, SECOND by Haywood, to approve Resolution No. 99-93. AYE: Williams, Devine, Purcell, Shanklin, Beller, Haywood, Warren. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 99-93

A resolution authorizing the installation and/or removal of traffic control devices at certain designated locations within the City of Lawton, Oklahoma. Locations: 1) Install "Handicapped Child Area" warning signs along the 2300 block of NW 78th Street; 2) Install "Yield" signs at intersection of NW 62nd and Elm Ave. yielding north/south NW 62nd; 3) Install "No Parking" signs along Oak Ave. for one block south of Cache Road; 4) Install a directional arrow at the tee intersection of NW 44th Street and Ridgecrest Drive; 5) Install "Yield" signs at intersection of SW 12th and New York Avenue yielding north/south SW 12th Street; 6) Install "Yield" signs at intersection of SW 16th and

Georgia Ave. yielding east/west Georgia Ave.; 7) Reconnect flashing school zone at NW 17th and Gore; 8) Reconnect flashing school zone at SW 6th and Lee; 9) Install "No Parking" signs along 4500 block of East Gore Blvd.; 10) Install "Yield" signs at intersection of SW 16th and Douglas Ave.; 11) Install "Stop" signs at intersection of SW 23rd Place and E Ave. stopping north/south SW 23rd Place.

17. Consider setting a date of August 24, 1999, to hold a public hearing and consider an ordinance closing the platted utility easements on Lots 19, 20 and 21, Block 4, Council Heights Addition located at approximately SE Interstate Drive and SE 7th Street. Exhibits: Application; Location Map; Sewer Atlas; Council Policy 5-1.

18. Consider setting a date of August 24, 1999, to hold a public hearing and consider an ordinance closing the park and certain utility easements within the park located on Lot B, Block 4, Council Heights Addition at approximately SE Interstate Drive and SE 7th Street. Exhibits: Application; Location Map; Map indicating location of utilities within park boundary; Council Policy 5-1.

Warren said he asked for separate consideration of Items 17 and 18 to ask why they are in the consent portion. He said Item 17 is not that big of a deal but 17 and 18 are connected so he asked for both to be pulled.

Baker said there was some discussion about putting these on consent and the decision was made to put it on consent because it is simply to set the public hearing date; it is not asking Council to make a decision other than setting the public hearing. He said another item that was brought to his attention was the initiator and that the initiator, as shown, is improper and Council will not see that in the future. Baker said from what he could gather, the members of the Council, the Mayor, City Manager, boards and commissions can serve as initiators, but we should not be showing individuals as the initiator. Warren said he did not have a problem with that if it is under new business, but with it being in consent, it should be by staff or Council or the Mayor.

Baker said they were going to develop an administrative policy on preparation of the agenda folder and agenda items so we can get a little bit more consistency; we do things differently sometimes and need some administrative policy in that regard.

Warren said he would offer a motion to approve Item 17. Shanklin asked if he was including Item 18. Warren said on Item 18, the problem is again that it is in the consent portion, but mainly that it deals with park land and that memos were presented concerning why some items were not going through Lakes & Land Commission before coming to Council, and this is now coming to Council before it has gone through the Parks & Recreation Commission. He said he knew the answer would be because it is just asking for Council to set a hearing, but Council does not have to set a hearing for a park. Vincent said a hearing is required to close a park and then the land is dedicated back to the original grantor because it is part of a plat; this is basically vacating a portion of the plat. Purcell asked if it should go to Parks & Recreation and Vincent said it was his understanding that it would be sent to the Commission for a recommendation prior to the public hearing.

Haywood said he had talked to some residents in Council Heights concerning this park.

MOVED by Haywood, SECOND by Warren, to table this item tonight and bring it back on the 27th. AYE: Purcell, Shanklin, Haywood, Warren. NAY: Williams, Beller. OUT: Devine. MOTION CARRIED.

Mayor Powell said the motion passed four to two on Items 17 and 18, and for informational purposes, Council was delaying probably a \$200 million project that would bring in money to the City of Lawton. Warren said if it is a \$200 million project, it should not have been on consent. Mayor Powell said he did not even know why Nick Richards was shown as the initiator and that it should have been a staff member. Haywood said he would bring it back.

23. Consider entering into an agreement with Caldwell Water Association for the sale of treated water outside the City limits located at approximately NE 75th Street and NE Cache Road. Exhibits: Letter of Request; Location Map; Excerpt of Committee Minutes; Agreement.

Bob Bigham, City Planner, said the Outside Water Committee recommended this item. He said on page four of the agreement, there is a typographical error in paragraph six and asked to strike "not to exceed four (4) members or residents". Shanklin asked what it should be. Bigham said that should be stricken. Shanklin asked if it was unlimited and Warren said that was what the committee decided. Bigham said the agreement with Dr. Head provided for four and that language was placed in this agreement by error.

MOVED by Shanklin, SECOND by Warren, to approve the Caldwell agreement as corrected. AYE: Purcell, Shanklin, Beller, Haywood, Warren, Williams. NAY: None. OUT: Devine. MOTION CARRIED.

42. Consider awarding contract for Playground Equipment. Exhibits: Recommendation; Bid Abstract.

Shanklin said this is a large project with only one bidder. It was pointed out that two bids were received.

MOVED by Shanklin, SECOND by Williams, to award the contract to Modlin Recreation Equipment, Inc. AYE: Purcell, Shanklin, Beller, Haywood, Warren, Williams, Devine. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER.

Shanklin said the newspaper had editorials recently about the airport and the lakes. He said he attended the last Lakes & Land Commission meeting and there were concerns that their recommendations were not being brought to Council. Shanklin said the Commission works hard and that he intended to listen to their recommendations, although he may not always agree with them, and that the Council as a body did not ignore them. He asked if Beller would like to comment on the airport.

Beller said the recent completion of the runway project at the airport is something everyone could be proud of and he encouraged Council to look at it. He said he thought sometimes communications were a real problem with airport management and tenants, and until the makeup of the Airport Authority was resolved, those concerns would remain. Beller said two members were approved tonight, Keith Bridges and John Marco. He said he hated for Council to put itself in the position of monitoring an authority when the authority should be running the airport to the satisfaction of the citizens of Lawton. Beller said he thought that once they got the makeup of the authority to listen to the concerns of the community as a whole, that it would change and hopefully in December when we have the opportunity to appoint two more members, there are two members whose terms of office are up in December, he really thought the airport would take a different direction as soon as those two members are replaced and he thought communication was the big thing out there. Beller said it has got to change and it has got to get better, and the Council should be concerned enough to want to hear from the airport, and it looked like sour grapes when he complained about something that happened at the airport authority and he had taken a back seat for the past few months, since that letter was originated two or three months ago if he said something it looked like sour grapes. He said in December when they can change the makeup of that authority, things would get better. Beller said he would visit with David Hale and try to explain those things to him, and the editorial staff at the newspaper always has the best interest of the community at heart when the editorials are written, although they sometimes hurt and that he did not like the editorial that lambasted the airport authority because they are doing a good job in some areas, but communication is at the lowest ebb it has been since he had been on the authority. Beller said he thought it would change in December.

Warren said a few weeks ago the Council decided to do away with detention, and part of that was that the committee would bring back to Council a regional detention theory or plan or some other kind of detention plan. He asked if there was an estimate on when that might be returned. Mayor Powell said if Warren had a doubt in his mind on whether or not the right thing was done he could go to Country Bingo on Interstate Drive and see where a man had to spend \$34 million for a project that serves nothing; he said to drive by and see that and see if the committee did the right thing. Mayor Powell said as he understood the motion that night, it was not for the committee bring something back. Beller asked the Mayor if he meant \$34 million and Mayor Powell said \$34,000. Mayor Powell said the detention is on the south side of the property, has a six inch curb and receives no water whatsoever off of the parking lot of the building itself; the flume lays at ground level and receives no water from this property so it was a total waste of money completely.

Mayor Powell said he understood Shanklin's motion that night to be for staff to start looking at some type of an alternative for detention, and not that committee. Shanklin agreed and said an engineering study had to be done to tell us where the areas are that would receive those because 99% of Lawton does not flood.

Baker said the way he understood the Council's action and Shanklin's motion was that staff and Council would work together to come up with an alternative and something to replace the detention. He said he had not pursued that since then and had been involved with other things that had received more priority. Baker said several staff members had been after him to get something going on it and the first thing he wanted to do was to conduct a really good survey of other communities in Oklahoma, as well as some in Kansas and Lubbock, Texas, and see how they address the problem and if they have effective programs. He said he planned to do that and bring it back to Council. Shanklin said Council would work with staff at that time. Baker said he had been working on the capital improvements program but needed to start working on this item.

Baker said on Thursday evening Council and the Mayor would consider a future capital improvements program for the City. He said he had distributed a memorandum which is to be considered a starting place and a staff recommendation. Baker said the capital improvements program will be Council's program.

Williams said he thought the Lakes & Land Commission might run smoother if a Council member were assigned to it. He asked if either the airport manager or authority make a presentation to Council every year or six months. Beller said it has not been, and has only been on an as needed basis in the past or if there was something Council could help them with, which gets back to the \$285,000 the authority asked for. Beller said it was his understanding that when the Council saw fit to let the authority have that money that they would repay it if they got a grant or if they received a governmental loan, and those are not available and they had looked at length for grants and FAA no

longer funds fuel farms so the only recourse is if something changes with FAA and money becomes available. Beller said they had touched base with J.C. Watts' office and other congressional offices to see if funding was available for that type of thing and it is not. Beller said there is no liability to repay those funds on a set schedule because when the authority asked for the money, the Council agreed they could pay it back when they had it and that they do not have it. Beller said the new parking lot is paying off at the airport and they are receiving more money than they thought they would.

Williams said he thought it would be of interest to the Council to receive a report from the airport authority every six or twelve months from the authority or manager. Beller said it is probably incumbent on the Council member who is an authority member to keep the Council briefed, but they are always willing to give a report to Council and that may need to be included in a policy that every six months the manager tells Council how they are doing. Beller said the money comes to the City before it comes to the authority.

Purcell complimented the Police Department for the 20% decrease in crime from the preceding year.

BUSINESS ITEMS:

MOVED by Warren, SECOND by Haywood, to convene in executive session as shown on the agenda and recommended by the legal staff. AYE: Shanklin, Beller, Haywood, Warren, Williams, Devine, Purcell. NAY: None. MOTION CARRIED.

47. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the acquisition of right of way for the West 82nd Street Reconstruction Project and discuss the lawsuit styled The City of Lawton vs. Wyatt Acres, et al., Case No. CJ-98-1087, in the District Court of Comanche County, and take appropriate action in open session. Exhibits: None.

48. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending lawsuit styled The City of Lawton vs. The MEGA Life and Health Insurance Company, et al., Case No. CJ-98-515, in the District Court of Comanche County, and take appropriate action in open session. Exhibits: None.

49. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to consider a settlement offer received in the pending damage claim of Robert Thomas, and, if appropriate, take action in open session. Exhibits: None.

50. Pursuant to Section 307B2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the negotiations for an Employment Agreement for FY 1999-2000 between the Fire Union, IAFF, Local 1882, and the City of Lawton, and take appropriate action in open session. Exhibits: None.

51. Pursuant to Section 307B2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the negotiations for a Collective Bargaining Agreement for FY 1999-2000 between the Police Union, IUPA, Local 24, and the City of Lawton, and take appropriate action in open session. Exhibits: None.

The Mayor and Council reconvened in regular, open session at approximately 9:33 p.m. with roll call reflecting all members present except Smith.

Vincent reported on Item 47, City vs. Wyatt Acres, that settlement of the litigation was discussed; staff recommended a motion to approve settlement in the amount of \$150,000 and authorize the Mayor and City Clerk to sign the appropriate documents.

MOVED by Warren, SECOND by Purcell, to approve settlement in the amount of \$150,000 and authorize the Mayor and City Clerk to sign the appropriate documents. AYE: Haywood, Warren, Williams, Devine, Purcell, Shanklin, Beller. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 99-94

A resolution approving and authorizing acceptance and payment of settlement in the condemnation case styled The City of Lawton, Oklahoma vs. Wyatt Acres Realty Company, et al., Case No. CJ-98-1087, in the District Court of Comanche County, Oklahoma.

Vincent said Item 48 was to discuss a pending lawsuit, City of Lawton vs. MEGA Life and Health Insurance Company, et al. He said one of the defendants in the case had made an offer of settlement in the amount of \$2,500, to make their personnel and files available to the City in the continued prosecution of the case against MEGA. Vincent recommended a motion authorizing the City Attorney's office to accept the settlement, prepare the necessary documents, and authorize the Mayor and City Clerk to sign the documents when prepared.

MOVED by Haywood, SECOND by Warren, to authorize the City Attorney's office to accept the settlement, prepare the necessary documents, and authorize the Mayor and City Clerk to sign the documents when prepared. AYE:

Warren, Williams, Devine, Purcell, Shanklin, Beller, Haywood. NAY: None. MOTION CARRIED.

Vincent said Item 49 was an item concerning the damage claim of Robert Thomas; it was discussed and staff recommendation was to settle the claim, as requested by the claimant's attorney, in the amount of \$3,500 and prepare the necessary paperwork and ask the Mayor and City Clerk to sign.

MOVED by Purcell, SECOND by Williams, to settle the claim, as requested by the claimant's attorney, in the amount of \$3,500 and prepare the necessary paperwork and ask the Mayor and City Clerk to sign. AYE: Williams, Devine, Purcell, Shanklin, Beller, Haywood, Warren. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 99-95

A resolution authorizing the City Attorney to enter into a settlement agreement for the sum of Three Thousand Five Hundred and no/100 dollars (\$3,500.00) as settlement of a claim filed by Robert Thomas, by and through his attorney, Jay Walker, and directing the City Attorney to prepare and file a journal entry incorporating said resolution and settlement agreement for the Court's approval.

Vincent said Item 50 was consideration of negotiations between the City of Lawton and the fire union; the fire union last week made an offer of settlement of a pending interest arbitration; recommend denial of the union settlement offer and no counter offer.

MOVED by Warren, SECOND by Williams, to deny the fire union settlement offer and make no counter offer. AYE: Williams, Devine, Purcell, Shanklin, Beller, Haywood, Warren. NAY: None. MOTION CARRIED.

Vincent said Item 51 was in regard to collective bargaining with the police union; action needed is a motion to appoint Mr. Gary Jackson, Assistant City Manager, as the City's interest arbitrator in the pending interest arbitration.

MOVED by Williams, SECOND by Warren, to appoint Gary Jackson, Assistant City Manager, as the City's interest arbitrator in the pending interest arbitration with the police union. AYE: Devine, Purcell, Shanklin, Beller, Haywood, Warren, Williams. NAY: None. MOTION CARRIED.

Mayor Powell said he had been asked to appoint a committee earlier in the meeting in regard to investigation of a claim, and that the committee would be Haywood, Shanklin and Devine.

There was no further business to consider and the meeting adjourned at 9:38 p.m. upon motion, second and roll call vote.